

ADMINISTRATIVE - INTERNAL USE ONLY

DIRECTOR OF CENTRAL INTELLIGENCE

Security Committee

SECOM-D-162

2 August 1983

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence

FROM:

Chairman

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SUBJECT: NSDD-84 Nondisclosure Agreement for SCI

REFERENCE: DCI Letter to Judge Clark dated 28 July 1983

1. Action Requested: None - for information only. This provides background information on negotiations to remedy the problem which occasioned referenced letter to Judge Clark protesting an appearance of erosion of DCI authority resulting from planned promulgation of the nondisclosure agreement for SCI under the terms of NSDD-84. This suggests an approach for you to use in your 3 August meeting with Judge Clark.

2. Background: On 28 July 1983, subsequent to receipt of your letter, Richard Willard, Deputy Assistant Attorney General, called and offered a compromise. If the DCI would accept the wording of the nondisclosure agreement (NdA) as drafted, promulgation of the NdA by the DCI would be assured. Mr. Willard was greatly concerned that any effort to amend the NdA would permit further efforts in the working group to weaken the agreement. The compromise would ensure that the Information Security Oversight Office (ISOO) would not appear to have usurped a DCI function regarding SCI security.

3. On 1 August 1983, [] Associate General Counsel, and I visited Kenneth deGraffenreid of the NSC Staff to discuss details of how the NdA for SCI would be promulgated. During this meeting, Mr. deGraffenreid agreed to propose that Judge Clark use the following language in sending the new NdA to the DCI for promulgation:

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"All NSC members have concurred in the attached Sensitive Compartmented Information (SCI) Nondisclosure Agreement. I have determined that the form meets the minimum standards required by NSDD-84 and ask that you promulgate this as the standard form for SCI access.

All requests for deviation from the language of this form will be sent to you for review and approval. In reviewing any

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request for waiver, minimum standards of NSDD-84 must be applied. Any deviation, change or waiver which you approve should be sent to me for a determination that it complies fully with the requirements of NSDD-84."

4. The NdA for classified (noncompartmented) information will be sent to the Director, ISOO, for promulgation. There is no plan to give similar authority for approving waivers or changes in the classified information NdA to the ISOO Director. Requests for deviations will go directly to the NSC. The DCI, therefore, will maintain his posture as the U.S. government official with the primary responsibility for protecting intelligence sources and methods.

5. Mr. deGraffenreid indicated that the NdA drafts (a copy of the SCI version is attached) are now being considered by NSC members with a 5 August deadline. Barring unforeseen problems, the agreements should be sent for promulgation around mid-August. We should be ready to act promptly in getting the new agreement sent to the Community. The SECOM staff and the Office of General Counsel will begin immediately to draft a letter from you promulgating the forms, and will add the nondisclosure agreement requirement to the DCID (No. 1/14) which states minimum standards governing access to SCI.

6. Recommendation: In your 3 August meeting with Judge Clark, you might express pleasure that your concerns regarding the NdA were resolved by the staffs. You might state that the language worked out with Mr. deGraffenreid for suggested use by Judge Clark in writing you will make it clear that the DCI's authorities remain intact.

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Attachment

Copy to: D/ICS w/att

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Next 4 Page(s) In Document Denied

The Director of Central Intelligence

Washington, D. C. 20505

28 JUL 1983

The Honorable William P. Clark
Assistant to the President for
National Security Affairs
The White House
Washington, D. C. 20500

Dear Judge Clark:

Actions being taken to implement National Security Decision Directive No. 84 (NSDD 84) have taken a turn which I did not anticipate when the Intelligence Community urged the President to adopt the Willard Report. Current plans to implement specific provisions of the NSDD will, I believe, significantly conflict with the responsibilities of the Director of Central Intelligence (DCI) under law.

At the time NSDD 84 was promulgated, the DCI was the unquestioned arbiter of security standards and criteria relating to intelligence sources and methods. An SCI nondisclosure agreement (Form 4193), issued in 1981 via the SECOM mechanism, was accepted throughout the Intelligence Community and was signed by thousands of persons. While the agreement was tailored to consider the concerns of Intelligence Community members, the basis for requiring such an agreement as a condition precedent to SCI access clearly flowed from the DCI's statutory responsibility. The major impetus for Form 4193 was the Supreme Court's having upheld in the Snepp case a similar nondisclosure agreement relating to CIA employment. I am now concerned, however, that the NSDD implementation process may undermine the responsibility of the DCI to protect SCI and other information relating to intelligence sources and methods because the DCI would no longer retain the necessary control of security standards and criteria.

The U. S. Government generally, and the Intelligence Community in particular, have long recognized the special responsibility of the DCI, set forth in the National Security Act of 1947, to protect intelligence sources and methods from unauthorized disclosure. This responsibility has been given effect by the establishment of Sensitive Compartmented Information (SCI) as a special category of intelligence data. Through Executive Orders 12333 and 12356 and a series of DCI Directives, DCI policy for SCI has been implemented throughout the U. S. Government. The DCI Security Committee (SECOM) was chartered to assist in carrying out these responsibilities. It did not occur to me, nor do I believe it was the President's intent, that the NSDD would in any way weaken or undermine the role of the DCI in such matters.

What has happened, however, is that a working group, chaired by the General Services Administration's Information Security Oversight Office, has revised the existing SCI nondisclosure agreement which I had promulgated. In addition, I understand the working group intends to make any agency's use of a more stringent agreement subject to ISOO approval. In effect, this transfers the authority for this important aspect of SCI security from the DCI to the Director of ISOO. It should be noted that the final draft of the NSDD circulated for review did not create such a role for ISOO and I must say, I was surprised to find such language published in the NSDD.

I believe the implementation of the NSDD would be best accomplished by the following steps: ISOO should develop standardized language relating only to the prepublication review of collateral information. This language should reflect any agreements reached by the working group concerning collateral prepublication review. Once this language has been developed, it should be presented to the SECOM for incorporation into a revised Form 4193, along with any other suggestions that the working group believes might strengthen the revised form. After due consideration, a revised Form 4193 will be promulgated by the SECOM, at my direction, including the collateral prepublication language developed by ISOO, as well as any other language adopted by the SECOM to strengthen the revised form, consistent with the NSDD. This will avoid any appearance of conflict between ISOO and the DCI's established authority to make the rules for the protection of intelligence sources and methods.

I regret the necessity to bring this to your attention, but any erosion of the DCI's security role would be contrary to the national interest. I hope this matter can be resolved quickly. In the interim, I shall plan to continue Intelligence Community use of the present nondisclosure agreement for SCI access.

Sincerely,

/s/

William J. Casey